

ORIGINAL

THOMAS E. FRANKOVICH,
A Professional Law Corporation
 THOMAS E. FRANKOVICH (State Bar No. 074414)
 4328 Redwood Hwy., Suite 300
 San Rafael, CA 94903
 Telephone: 415/674-8600
 Facsimile: 415/674-9900

Attorneys for Plaintiff
 CRAIG YATES, an individual

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

CRAIG YATES, an individual,

Plaintiff,

v.

ORIGINAL BUFFALO WINGS; THE UNG
 CORPORATION, dba ORIGINAL
 BUFFALO WINGS; PATRICIA
 MONTAGUE, an individual; and
 PATRICIA MONTAGUE, as trustee of the
 PATRICIA MONTAGUE FAMILY TRUST
 of 2004,

Defendants.

CV 10 3582
 CASE NO.
Civil Rights

**COMPLAINT FOR INJUNCTIVE RELIEF
 AND DAMAGES:**

1st CAUSE OF ACTION: For Denial of Access
 by a Public Accommodation in Violation of the
 Americans with Disabilities Act of 1990 (42
 U.S.C. §12101, *et seq.*)

2nd CAUSE OF ACTION: For Denial of Full
 and Equal Access in Violation of California
 Civil Code §§54, 54.1 and 54.3

3rd CAUSE OF ACTION: For Denial of
 Accessible Sanitary Facilities in Violation of
 California Health & Safety Code §19955, *et seq.*

4th CAUSE OF ACTION: For Denial of
 Access to Full and Equal Accommodations,
 Advantages, Facilities, Privileges and/or
 Services in Violation of California Civil Code
 §51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

1 Plaintiff CRAIG YATES, an individual, complains of defendants THE UNG
2 CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an
3 individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY
4 TRUST of 2004 and alleges as follows:

5 **INTRODUCTION:**

6 1. This is a civil rights action for discrimination against persons with physical
7 disabilities, of which class plaintiff CRAIG YATES and the disability community are members,
8 for failure to remove architectural barriers structural in nature at defendants' ORIGINAL
9 BUFFALO WINGS, a place of public accommodation, thereby discriminatorily denying plaintiff
10 and the class of other similarly situated persons with physical disabilities access to, the full and
11 equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services,
12 and accommodations thereof. Plaintiff seeks injunctive relief and damages pursuant to the
13 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code §§51,
14 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

15 2. Plaintiff CRAIG YATES is a person with physical disabilities who, on or about
16 March 27, 2010, April 24, 2010, May 22, 2010, May 29, 2010, June 5, 2010 and July 14, 2010,
17 was an invitee, guest, patron, customer at defendants' ORIGINAL BUFFALO WINGS, in the
18 City of San Francisco, California. At said times and place, defendants failed to provide proper
19 legal access to the wings restaurant, which is a "public accommodation" and/or a "public
20 facility" including, but not limited to entrance, dining area, signage and parking. The denial of
21 access was in violation of both federal and California legal requirements, and plaintiff
22 CRAIG YATES suffered violation of his civil rights to full and equal access, and was
23 embarrassed and humiliated.

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1 **JURISDICTION AND VENUE:**

2 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
 3 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
 4 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
 5 nucleus of operative facts and arising out of the same transactions, are also brought under parallel
 6 California law, whose goals are closely tied with the ADA, including but not limited to violations
 7 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*
 8 *seq.*, including §19959; Title 24 California Building Standards Code.

9 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
 10 founded on the facts that the real property which is the subject of this action is located at/near
 11 2499 Lombard Street, in the City and County of San Francisco, State of California, and that
 12 plaintiff's causes of action arose in this county.

13 **PARTIES:**

14 5. Plaintiff CRAIG YATES is a "physically handicapped person", a "physically
 15 disabled person", and a "person with physical disabilities" (hereinafter the terms "physically
 16 disabled", "physically handicapped" and "person with physical disabilities" are used
 17 interchangeably, as these words have similar or identical common usage and legal meaning, but
 18 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically
 19 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54 and 54.1, and other
 20 statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff
 21 CRAIG YATES is a "person with physical disabilities", as defined by all applicable California
 22 and United States laws. Plaintiff is a triplegic. Plaintiff CRAIG YATES requires the use of a
 23 wheelchair to travel about in public. Consequently, plaintiff CRAIG YATES is a member of that
 24 portion of the public whose rights are protected by the provisions of Health & Safety Code
 25 §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped
 26 Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the
 27 Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C.
 28 §12101, *et seq.*

6. Defendants THE UNG CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY TRUST of 2004 (hereinafter alternatively collectively referred to as “defendants”) are the owners and operators, lessors and/or lessees, or agents of the owners, lessors and/or lessees, of the public accommodation known as ORIGINAL BUFFALO WINGS, located at/near 2499 Lombard Street, San Francisco, California, or of the building and/or buildings which constitute said public accommodation.

7. At all times relevant to this complaint, defendants THE UNG CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY TRUST of 2004, own and operate in joint venture the subject ORIGINAL BUFFALO WINGS as a public accommodation. This business is open to the general public and conducts business therein. The business is a “public accommodation” or “public facility” subject to the requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

8. At all times relevant to this complaint, defendants THE UNG CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY TRUST of 2004 are jointly and severally responsible to identify and remove architectural barriers at the subject ORIGINAL BUFFALO WINGS pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent part:

§ 36.201 General

(b) *Landlord and tenant responsibilities.* Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

28 CFR §36.201(b)

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1 **PRELIMINARY FACTUAL ALLEGATIONS:**

2 9. The ORIGINAL BUFFALO WINGS, is a restaurant, located at/near 2499
3 Lombard Street, San Francisco, California. The ORIGINAL BUFFALO WINGS, its entrance,
4 dining area, signage, parking and its other facilities are each a "place of public accommodation or
5 facility" subject to the barrier removal requirements of the Americans with Disabilities Act. On
6 information and belief, each such facility has, since July 1, 1970, undergone "alterations,
7 structural repairs and additions," each of which has subjected the ORIGINAL BUFFALO
8 WINGS and each of its facilities, its entrance, dining area, signage and parking to disability
9 access requirements per the Americans with Disabilities Act Accessibility Guidelines (ADAAG),
10 and Title 24 of the California Code of regulations (Title 24).

11 10. On or about January of 1995, defendants' and each of them purchased and/or
12 took possessory control of the premises now known as ORIGINAL BUFFALO WINGS. At all
13 times prior thereto, defendants' and each of them were aware of their obligation prior to the close
14 of escrow, or upon taking possessory interest that public accommodations had a duty to identify
15 and remove architectural barriers and were aware that the subject restaurant was not accessible to
16 the disabled. Nevertheless, defendants' and each of them, operated ORIGINAL BUFFALO
17 WINGS as though it was accessible.

18 11. At all times stated herein, defendants' and each of them with the knowledge that
19 each of them had a continuing obligation to identify and remove architectural barriers where it
20 was readily achievable to do so, failed to adopt a transition plan to provide better and/or
21 compliant access to the subject accommodation.

22 12. At all times referred to herein and continuing to the present time, defendants, and
23 each of them, advertised, publicized and held out the ORIGINAL BUFFALO WINGS as being
24 handicapped accessible and handicapped usable.

25 13. On or about March 27, 2010, April 24, 2010, May 22, 2010, May 29, 2010,
26 June 5, 2010 and July 14, 2010, plaintiff CRAIG YATES was an invitee and guest at the subject
27 ORIGINAL BUFFALO WINGS, for purposes of purchasing food and beverage.

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1 14. On or about March 27, 2010, April 24, 2010, May 22, 2010, May 29, 2010, June
2 5, 2010 and July 14, 2010, plaintiff CRAIG YATES while attempting to find parking at the
3 subject restaurant encountered three (3) parking stalls at the ORIGINAL BUFFALO WINGS,
4 none of which were for disabled parking use and there was no handicapped parking signage.

5 15. On or about March 27, 2010, April 24, 2010, May 22, 2010, May 29, 2010, June
6 5, 2010 and July 14, 2010, plaintiff CRAIG YATES while patronizing the ORIGINAL
7 BUFFALO WINGS encountered other architectural barriers: lack of a compliant entrance; lack
8 of signage directing the disabled to an accessible (or most accessible entrance); lack of
9 maintenance of an entry door with proper pressure; and lack of a compliant dining area.

10 16. On or about April 30, 2010, plaintiff CRAIG YATES wrote both the landlord and
11 tenant concerning the entrance(s), a strike side clearance and parking. Plaintiff CRAIG YATES
12 provided a source to call to get help. Plaintiff CRAIG YATES never received a response.

13 17. Therefore, at said time(s) and place, plaintiff CRAIG YATES, a person with a
14 disability, encountered the following inaccessible elements of the subject ORIGINAL BUFFALO
15 WINGS which constituted architectural barriers and a denial of the proper and legally-required
16 access to a public accommodation to persons with physical disabilities including, but not limited
17 to:

- 18 a. lack of directional signage to show accessible routes of travel, i.e., to the
19 accessible entrance(s);
- 20 b. lack of the requisite type and number of disabled parking stall(s);
- 21 c. lack of tow-a-way signage;
- 22 d. lack of an accessible entrance due to lack of strike side clearance;
- 23 e. lack of an accessible dining area; 5% compliance requirement; and
- 24 f. On personal knowledge, information and belief, other public facilities and
25 elements too numerous to list were improperly inaccessible for use by
26 persons with physical disabilities.
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1 18. At all times stated herein, the existence of architectural barriers at defendants'
2 place of public accommodation evidenced "actual notice" of defendants' intent not to comply
3 with the Americans with Disabilities Act of 1990 either then, now or in the future.

4 19. On or about April 30, 2010, defendant(s) were sent two (2) letters by or on behalf
5 of plaintiff CRAIG YATES advising of their need to take immediate action to remove
6 architectural barriers and requesting a written response upon receipt of his letter, promising to
7 immediately remove the barriers and providing a date when that would be accomplished. Said
8 letters are attached hereto collectively as exhibit "A" and incorporated by reference as though
9 fully set forth herein. Defendants' failure to respond evidenced an intent not to seek or engage in
10 an early and reasonable resolution of the matter.

11 20. At all times stated herein, defendants, and each of them, did not act as reasonable
12 and prudent landlord/tenant and were "negligent per se" or at a minimum negligent for not
13 removing architectural barriers that would foreseeably prevent plaintiff CRAIG YATES from
14 receiving the same goods and services as able bodied people and some of which may and did pose
15 a threat of harm and/or personal injury to people with disabilities.

16 21. As a legal result of defendants THE UNG CORPORATION, dba ORIGINAL
17 BUFFALO WINGS; PATRICIA MONTAGUE, an individual; and PATRICIA MONTAGUE, as
18 trustee of the PATRICIA MONTAGUE FAMILY TRUST of 2004's failure to act as a reasonable
19 and prudent public accommodation in identifying, removing or creating architectural barriers,
20 policies, practices and procedures that denied access to plaintiff and other persons with
21 disabilities, plaintiff suffered the damages as alleged herein.

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1 22. As a result of the denial of equal access to defendants' facilities due to the acts and
2 omissions of defendants, and each of them, in owning, operating and maintaining these subject
3 public facilities, plaintiff suffered violations of plaintiff's civil rights, including but not limited to
4 rights under Civil Code §§54, 54.1 and 54.3.

5 23. Further, plaintiff CRAIG YATES suffered emotional distress, mental distress,
6 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,
7 embarrassment, anger, disappointment and worry, expectedly and naturally associated with a
8 person with physical disabilities being denied access, all to his damages as prayed hereinafter in
9 an amount within the jurisdiction of this court. No claim is being made for mental and emotional
10 distress over and above that usually associated with the discrimination and physical injuries
11 claimed, and no expert testimony regarding this usual mental and emotional distress will be
12 presented at trial in support of the claim for damages.

13 24. Defendants', and each of their, failure to remove the architectural barriers
14 complained of herein created, at the time of plaintiff CRAIG YATES's first visit to said public
15 accommodation, and continues to create continuous and repeated exposure to substantially the
16 same general harmful conditions which caused plaintiff CRAIG YATES harm as stated herein.

17 25. Plaintiff CRAIG YATES was denied his rights to equal access to a public facility
18 by defendants THE UNG CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA
19 MONTAGUE, an individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA
20 MONTAGUE FAMILY TRUST of 2004, because defendants THE UNG CORPORATION, dba
21 ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an individual; and PATRICIA
22 MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY TRUST of 2004 maintained
23 a restaurant without access for persons with physical disabilities to its facilities, including but not
24 limited to the entrance, dining area, signage, parking and other public areas as stated herein, and
25 continue to the date of filing this complaint to deny equal access to plaintiff and other persons
26 with physical disabilities in these and other ways.

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1 26. On information and belief, construction alterations carried out by defendants have
2 also triggered access requirements under both California law and the Americans with Disabilities
3 Act of 1990.

4 27. Plaintiff, as described hereinbelow, seeks injunctive relief to require the
5 ORIGINAL BUFFALO WINGS to be made accessible to meet the requirements of both
6 California law and the Americans with Disabilities Act of 1990, whichever is more restrictive, so
7 long as defendants operate the ORIGINAL BUFFALO WINGS as a public facility.

8 28. Plaintiff seeks damages for violation of their civil rights on March 27, 2010,
9 April 24, 2010, May 22, 2010, May 29, 2010, June 5, 2010 and July 14, 2010 and seeks statutory
10 damages of not less than \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000 pursuant to
11 Civil Code §54.3, for each day after his visit that the trier of fact (court/jury) determines was the
12 date that some or all remedial work should have been completed under the standard that the
13 landlord and tenant had an ongoing duty to identify and remove architectural barriers where it was
14 readily achievable to do so, which deterred plaintiff CRAIG YATES from returning to the subject
15 public accommodation because of his knowledge and/or belief that neither some or all
16 architectural barriers had been removed and that said premises remains inaccessible to persons
17 with disabilities whether a wheelchair user or otherwise.

18 29. On information and belief, defendants have been negligent in their affirmative duty
19 to identify the architectural barriers complained of herein and negligent in the removal of some or
20 all of said barriers.

21 30. Because of defendants' violations, plaintiff and other persons with physical
22 disabilities are unable to use public facilities such as those owned and operated by defendants on a
23 "full and equal" basis unless such facility is in compliance with the provisions of the Americans
24 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and
25 other accessibility law as plead herein. Plaintiff seeks an order from this court compelling
26 defendants to make the ORIGINAL BUFFALO WINGS accessible to persons with disabilities.

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1 31. On information and belief, defendants have intentionally undertaken to modify and
2 alter existing building(s), and have failed to make them comply with accessibility requirements
3 under the requirements of ADAAG and Title 24. The acts and omission of defendants, and each
4 of them, in failing to provide the required accessible public facilities at the time of plaintiff's visit
5 and injuries, indicate actual and implied malice toward plaintiff, and despicable conduct carried
6 out by defendants, and each of them, with a willful and conscious disregard for the rights and
7 safety of plaintiff and other similarly situated persons, and justify a trebling of damages as
8 provided by Civil Code §§52(a) and 54.3, in order to make a more profound example of
9 defendants, and each of them, to other operators and landlords of other restaurants and other
10 public facilities, and to punish defendants and to carry out the purposes of the Civil Code §§ 51,
11 51.5 and 54.

12 32. Plaintiff is informed and believes and therefore alleges that defendants THE UNG
13 CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an
14 individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY
15 TRUST of 2004, and each of them, caused the subject building(s) which constitute the
16 ORIGINAL BUFFALO WINGS to be constructed, altered and maintained in such a manner that
17 persons with physical disabilities were denied full and equal access to, within and throughout said
18 building(s) of the subject restaurant and were denied full and equal use of said public facilities.
19 Furthermore, on information and belief, defendants have continued to maintain and operate said
20 restaurant and/or its building(s) in such conditions up to the present time, despite actual and
21 constructive notice to such defendants that the configuration of the ORIGINAL BUFFALO
22 WINGS and/or its building(s) is in violation of the civil rights of persons with physical
23 disabilities, such as plaintiff CRAIG YATES, and other members of the disability community.
24 Such construction, modification, ownership, operation, maintenance and practices of such public
25 facilities are in violation of Civil Code §§51, 51.5 and 54, Health and Safety Code §19955, and
26 the ADA, 42 U.S.C. §12101, *et seq.*

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33. On personal knowledge, information and belief, the basis of defendants' actual and constructive notice that the physical configuration of the facilities including, but not limited to, architectural barriers constituting the ORIGINAL BUFFALO WINGS and/or building(s) was in violation of the civil rights of persons with physical disabilities, such as plaintiff, includes, but is not limited to, communications with invitees and guests, plaintiff CRAIG YATES himself, owners of other restaurants and businesses, notices they obtained from governmental agencies upon modification, improvement, or substantial repair of the subject premises and other properties owned by these defendants, newspaper articles and trade publications regarding the Americans with Disabilities Act of 1990 and other access laws, public service announcements by former U.S. Attorney General Janet Reno between 1993 and 2000, and other similar information. Defendants' failure, under state and federal law, to make the ORIGINAL BUFFALO WINGS accessible is further evidence of defendants' conscious disregard for the rights of plaintiff and other similarly situated persons with disabilities. Despite being informed of such effect on plaintiff and other persons with physical disabilities due to the lack of accessible facilities, defendants, and each of them, knowingly and willfully refused to take any steps to rectify the situation and to provide full and equal access for plaintiff and other persons with physical disabilities to the subject restaurant. Said defendants, and each of them, have continued such practices, in conscious disregard for the rights of plaintiff and other persons with physical disabilities, up to the date of filing of this complaint, and continuing thereon. Defendants had further actual knowledge of the architectural barriers referred to herein by virtue of the demand letter addressed to the defendants and served concurrently with the summons and complaint. Said conduct, with knowledge of the effect it was and is having on plaintiff and other persons with physical disabilities, constitutes despicable conduct in conscious disregard of the rights and safety of plaintiff and of other similarly situated persons, justifying the imposition of treble damages per Civil Code §§52 and 54.3.

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34. Plaintiff CRAIG YATES and the disability community, consisting of persons with disabilities, would, could and will return to the subject public accommodation when it is made accessible to persons with disabilities.

I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)

(On behalf of Plaintiff CRAIG YATES, an individual and Against Defendants THE UNG CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY TRUST of 2004, inclusive)
(42 U.S.C. §12101, *et seq.*)

35. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 34 of this complaint.

36. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed to more fully protect:

some 43 million Americans with one or more physical or mental disabilities; [that] historically society has tended to isolate and segregate individuals with disabilities; [that] such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; [that] the nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living and economic self-sufficiency for such individuals; [and that] the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.

37. Congress stated as its purpose in passing the Americans with Disabilities Act of 1990 (42 U.S.C. §12102):

It is the purpose of this act (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and (4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

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1 38. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
2 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
3 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
4 accommodations identified for purposes of this title was:

5 (7) PUBLIC ACCOMMODATION - The following private
6 entities are considered public accommodations for purposes of this
7 title, if the operations of such entities affect commerce -

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9 (B) a restaurant, bar or other establishment serving food or
10 drink.

11 42 U.S.C. §12181(7)(B)

12 39. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against
13 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
14 privileges, advantages, or accommodations of any place of public accommodation by any person
15 who owns, leases, or leases to, or operates a place of public accommodation."

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1 40. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
 2 42 U.S.C. §12182(b)(2)(a) are:

3 (I) the imposition or application of eligibility criteria
 4 that screen out or tend to screen out an individual with a disability
 5 or any class of individuals with disabilities from fully and equally
 6 enjoying any goods, services, facilities, privileges, advantages, or
 accommodations, unless such criteria can be shown to be necessary
 for the provision of the goods, services, facilities, privileges,
 advantages, or accommodations being offered;

7 (ii) a failure to make reasonable modifications in
 8 policies, practices, or procedures, when such modifications are
 9 necessary to afford such goods, services, facilities, privileges,
 10 advantages or accommodations to individuals with disabilities,
 unless the entity can demonstrate that making such modifications
 would fundamentally alter the nature of such goods, services,
 facilities, privileges, advantages, or accommodations;

11 (iii) a failure to take such steps as may be necessary to
 12 ensure that no individual with a disability is excluded, denied
 13 services, segregated or otherwise treated differently than other
 14 individuals because of the absence of auxiliary aids and services,
 unless the entity can demonstrate that taking such steps would
 fundamentally alter the nature of the good, service, facility,
 privilege, advantage, or accommodation being offered or would
 result in an undue burden;

15 (iv) a failure to remove architectural barriers, and
 16 communication barriers that are structural in nature, in existing
 facilities . . . where such removal is readily achievable; and

17 (v) where an entity can demonstrate that the removal of
 18 a barrier under clause (iv) is not readily achievable, a failure to
 19 make such goods, services, facilities, privileges, advantages or
 accommodations available through alternative methods if such
 methods are readily achievable.

20 The acts of defendants set forth herein were a violation of plaintiff's rights under the ADA, Public
 21 Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective
 22 January 31, 1993, the standards of the ADA were also incorporated into California Civil Code
 23 §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

24 41. The removal of the barriers complained of by plaintiff as hereinabove alleged were
 25 at all times after January 26, 1992 "readily achievable" as to the subject building(s) of ORIGINAL
 26 BUFFALO WINGS pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if
 27 the removal of all the barriers complained of herein together was not "readily achievable," the
 28 removal of each individual barrier complained of herein was "readily achievable."

1 On information and belief, defendants' failure to remove said barriers was likewise due to
2 discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182
3 (b)(2)(A)(i) and (ii).

4 42. Per 42 U.S.C. §12181 (9), the term "readily achievable" means "easily
5 accomplishable and able to be carried out without much difficulty or expense." The statute
6 defines relative "expense" in part in relation to the total financial resources of the entities
7 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that
8 plaintiff complains of herein were and are "readily achievable" by the defendants under the
9 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was
10 not "readily achievable" for defendants to remove each of such barriers, defendants have failed to
11 make the required services available through alternative methods which were readily achievable.

12 43. On information and belief, construction work on, and modifications of, the subject
13 building(s) of the subject restaurant occurred after the compliance date for the Americans with
14 Disabilities Act, January 26, 1992, independently triggering access requirements under Title III of
15 the ADA.

16 44. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
17 *seq.*, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil Rights
18 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on the basis
19 of disability in violation of this title or have reasonable grounds for believing that plaintiff is about
20 to be subjected to discrimination in violation of §302. Plaintiff is deterred from returning to or
21 making use of the public facilities complained of herein so long as the premises and defendants'
22 policies bar full and equal use by persons with physical disabilities.

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45. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions." Pursuant to this section, plaintiff CRAIG YATES has not returned to defendants' premises since on or about July 14, 2010, but on information and belief, alleges that defendants have continued to violate the law and deny the rights of plaintiff and of other persons with physical disabilities to access this public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title."

46. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement the Americans with Disabilities Act of 1990, including but not limited to an order granting injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.
 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants THE UNG CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY TRUST of 2004 , inclusive)
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

47. Plaintiff repleads and incorporates by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 46 of this complaint.

48. At all times relevant to this action, California Civil Code §54 has provided that persons with physical disabilities are not to be discriminated against because of physical handicap or disability. This section provides that:

(a) Individuals with disabilities . . . have the same rights as the general public to full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, and other public places.

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1 49. California Civil Code §54.1 provides that persons with disabilities shall not be
2 denied full and equal access to places of public accommodation or facilities:

3 (a)(1) Individuals with disabilities shall be entitled to full
4 and equal access, as other members of the general public, to
5 accommodations, advantages, facilities, medical facilities, including
6 hospitals, clinics, and physicians' offices, and privileges of all
7 common carriers, airplanes, motor vehicles, railroad trains,
8 motorbuses, streetcars, boats, or any other public conveyances or
9 modes of transportation (whether private, public, franchised,
10 licensed, contracted, or otherwise provided), telephone facilities,
11 adoption agencies, private schools, hotels, lodging places, places of
12 public accommodation, amusement or resort, and other places to
13 which the general public is invited, subject only to the conditions
14 and limitations established by law, or state or federal regulation, and
15 applicable alike to all persons.

16 Civil Code §54.1(a)(1)

17 50. California Civil Code §54.1 further provides that a violation of the Americans with
18 Disabilities Act of 1990 constitutes a violation of section 54.1:

19 (d) A violation of the right of an individual under the
20 Americans with Disabilities Act of 1990 (Public Law 101-336) also
21 constitutes a violation of this section, and nothing in this section
22 shall be construed to limit the access of any person in violation of
23 that act.

24 Civil Code §54.1(d)

1 51. Plaintiff CRAIG YATES is a person within the meaning of Civil Code §54.1
 2 whose rights have been infringed upon and violated by the defendants, and each of them, as
 3 prescribed by Civil Code §§54 and 54.1. Each specific architectural barrier which defendants
 4 knowingly and willfully fail and refuse to remove constitutes a separate act in violation of Civil
 5 Code §§54 and 54.1. Plaintiff has been and continue to be denied full and equal access to
 6 defendants' ORIGINAL BUFFALO WINGS. As a legal result, plaintiff is entitled to seek
 7 damages pursuant to a court or jury determination, in accordance with California Civil Code
 8 §54.3(a) for each day on which he visited or have been deterred from visiting the subject
 9 restaurant because of his knowledge and belief that the restaurant is inaccessible to persons with
 10 disabilities. California Civil Code §54.3(a) provides:

11 Any person or persons, firm or corporation, who denies or interferes
 12 with admittance to or enjoyment of the public facilities as specified
 13 in Sections 54 and 54.1 or otherwise interferes with the rights of an
 14 individual with a disability under Sections 54, 54.1 and 54.2 is
 15 liable for each offense for the actual damages and any amount as
 16 may be determined by a jury, or the court sitting without a jury, up
 17 to a maximum of three times the amount of actual damages but in
 18 no case less than . . . one thousand dollars (\$1,000) and . . .
 19 attorney's fees as may be determined by the court in addition
 20 thereto, suffered by any person denied any of the rights provided in
 21 Sections 54, 54.1 and 54.2.

22 Civil Code §54.3(a)

23 52. On or about March 27, 2010, April 24, 2010, May 22, 2010, May 29, 2010, June 5,
 24 2010 and July 14, 2010, plaintiff CRAIG YATES suffered violations of Civil Code §§54 and 54.1
 25 in that plaintiff CRAIG YATES was denied access entrance, dining area, signage, parking and
 26 other public facilities as stated herein at the ORIGINAL BUFFALO WINGS and on the basis that
 27 plaintiff CRAIG YATES was a person with physical disabilities.

28 53. As a result of the denial of equal access to defendants' facilities due to the acts and
 omissions of defendants, and each of them, in owning, operating and maintaining these subject
 public facilities, plaintiff suffered violations of plaintiff's civil rights, including but not limited to
 rights under Civil Code §§54, 54.1 and 54.3.

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1 54. Further, plaintiff CRAIG YATES suffered mental distress, mental suffering, mental
2 anguish, which includes shame, humiliation, embarrassment, frustration, anger, disappointment
3 and worry, all of which are expectedly and naturally associated with a denial of access to a person
4 with physical disabilities, all to plaintiff's damages as hereinafter stated. Defendants' actions and
5 omissions to act constituted discrimination against plaintiff on the sole basis that plaintiff is a
6 person or an entity that represents persons with physical disabilities and unable, because of the
7 architectural barriers created and maintained by the defendants in violation of the subject laws, to
8 use the public facilities hereinabove described on a full and equal basis as other persons.

9 55. Plaintiff has been damaged by defendants', and each of their, wrongful conduct and
10 seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation of plaintiff's rights
11 as a person or an entity that represents persons with physical disabilities on or about
12 March 27, 2010, April 24, 2010, May 22, 2010, May 29, 2010, June 5, 2010 and July 14, 2010,
13 and on a continuing basis since then, including statutory damages, a trebling of all of actual
14 damages, general and special damages available pursuant to §54.3 of the Civil Code according to
15 proof.

16 56. As a result of defendants', and each of their, acts and omissions in this regard,
17 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce
18 plaintiff's rights and enforce the provisions of the law protecting access for persons with physical
19 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to
20 the provisions of Civil Code §54.3, plaintiff therefore will seek recovery in this lawsuit for all
21 reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,
22 plaintiff's lawsuit is intended not only to obtain compensation for damages to plaintiff, but also to
23 compel the defendants to make their facilities accessible to all members of the public with
24 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to
25 the provisions of §1021.5 of the Code of Civil Procedure.

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1 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY**
 2 **FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.**
 3 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants THE UNG
 4 CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an
 individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE
 FAMILY TRUST of 2004, inclusive)
 (Health & Safety Code §19955, *et seq.*)

5 57. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
 6 the allegations contained in paragraphs 1 through 56 of this complaint.

7 58. Health & Safety Code §19955 provides in pertinent part:

8 The purpose of this part is to insure that public accommodations or
 9 facilities constructed in this state with private funds adhere to the
 10 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5
 11 of Title 1 of the Government Code. For the purposes of this part
 12 "public accommodation or facilities" means a building, structure,
 13 facility, complex, or improved area which is used by the general
 public and shall include auditoriums, hospitals, theaters, restaurants,
 hotels, motels, stadiums, and convention centers. When sanitary
 facilities are made available for the public, clients or employees in
 such accommodations or facilities, they shall be made available for
 the handicapped.

14 59. Health & Safety Code §19956, which appears in the same chapter as §19955,
 15 provides in pertinent part, "accommodations constructed in this state shall conform to the
 16 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government
 17 Code" Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all
 18 public accommodations constructed or altered after that date. On information and belief, portions
 19 of the ORIGINAL BUFFALO WINGS and/or of the building(s) were constructed and/or altered
 20 after July 1, 1970, and substantial portions of the subject restaurant and/or the building(s) had
 21 alterations, structural repairs, and/or additions made to such public accommodations after July 1,
 22 1970, thereby requiring said restaurant and/or building to be subject to the requirements of Part
 23 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or
 24 additions per Health & Safety Code §19959.

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1 60. Pursuant to the authority delegated by Government Code §4450, *et seq*, the State
2 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,
3 1982, Title 24 of the California Building Standards Code adopted the California State Architect's
4 Regulations and these regulations must be complied with as to any alterations and/or
5 modifications of ORIGINAL BUFFALO WINGS and/or the building(s) occurring after that date.
6 Construction changes occurring prior to this date but after July 1, 1970 triggered access
7 requirements pursuant to the "ASA" requirements, the American Standards Association
8 Specifications, A117.1-1961. On information and belief, at the time of the construction and
9 modification of said building, all buildings and facilities covered were required to conform to
10 each of the standards and specifications described in the American Standards Association
11 Specifications and/or those contained in Title 24 of the California Building Standards Code.

12 61. Restaurants such as the ORIGINAL BUFFALO WINGS are "public
13 accommodations or facilities" within the meaning of Health & Safety Code §19955, *et seq*.

14 62. As a result of the actions and failure to act of defendants, and as a result of the
15 failure to provide proper and legally handicapped-accessible public facilities, plaintiff was denied
16 plaintiff's rights to full and equal access to public facilities and suffered a loss of plaintiff's civil
17 rights and plaintiff's rights as a person with physical disabilities to full and equal access to public
18 facilities.

19 63. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,
20 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce plaintiff's
21 civil rights and enforce provisions of the law protecting access for the persons with physical
22 disabilities and prohibiting discrimination against the persons with physical disabilities, and to
23 take such action both in plaintiff's own interests and in order to enforce an important right
24 affecting the public interest. Plaintiff, therefore, seeks in this lawsuit the recovery of all
25 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure
26 §1021.5. Plaintiff additionally seeks attorneys' fees pursuant to Health & Safety Code §19953
27 and Civil Code §§54.3 and/or in the alternative, plaintiff will seek attorneys' fees, costs and
28 litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)).

1 Plaintiff will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

2 64. Plaintiff seeks injunctive relief for an order compelling defendants, and each of
3 them, to make the subject place of public accommodation readily accessible to and usable by
4 persons with disabilities.

5 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND
6 EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES
7 AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET
8 SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

9 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants THE UNG
CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an
individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE
FAMILY TRUST of 2004, inclusive)
(Civil Code §51, 51.5)

10 65. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
11 the allegations contained in paragraphs 1 through 64 of this complaint.

12 66. Defendants' actions and omissions and failure to act as a reasonable and prudent
13 public accommodation in identifying, removing and/or creating architectural barriers, policies,
14 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The
15 Unruh Act provides:

16 This section shall be known, and may be cited, as the Unruh
Civil Rights Act.

17 All persons within the jurisdiction of this state are free and
18 equal, and no matter what their sex, race, color, religion, ancestry,
19 national origin, or **disability** are entitled to the full and equal
accommodations, advantages, facilities, privileges, or services in all
business establishments of every kind whatsoever.

20 This section shall not be construed to confer any right or
21 privilege on a person that is conditioned or limited by law or that is
22 applicable alike to persons of every sex, color, race, religion,
ancestry, national origin, or **disability**.

23 Nothing in this section shall be construed to require any
24 construction, alteration, repair, structural or otherwise, or
25 modification of any sort whatsoever, beyond that construction,
26 alteration, repair, or modification that is otherwise required by other
27 provisions of law, to any new or existing establishment, facility,
28 building, improvement, or any other structure . . . nor shall anything
in this section be construed to augment, restrict, or alter in any way
the authority of the State Architect to require construction,
alteration, repair, or modifications that the State Architect otherwise
possesses pursuant to other . . . laws.

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1 A violation of the right of any individual under the
 2 Americans with Disabilities Act of 1990 (Public Law 101-336) shall
 also constitute a violation of this section.

3 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
 4 "intent" of the defendants in not complying with barrier removal is not an issue. Hence, the
 5 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or
 6 failing to act to identify and remove barriers can be construed as a "negligent per se" act of
 7 defendants, and each of them.

8 67. The acts and omissions of defendants stated herein are discriminatory in nature and
 9 in violation of Civil Code §51.5:

10 No business establishment of any kind whatsoever shall
 11 discriminate against, boycott or blacklist, refuse to buy from, sell to,
 12 or trade with any person in this state because of the race, creed,
 13 religion, color, national origin, sex, or **disability** of the person or of
 the person's partners, members, stockholders, directors, officers,
 managers, superintendents, agents, employees, business associates,
 suppliers, or customers.

14 As used in this section, "person" includes any person, firm
 15 association, organization, partnership, business trust, corporation,
 limited liability company, or company.

16 Nothing in this section shall be construed to require any
 17 construction, alteration, repair, structural or otherwise, or
 18 modification of any sort whatsoever, beyond that construction,
 19 alteration, repair or modification that is otherwise required by other
 20 provisions of law, to any new or existing establishment, facility,
 21 building, improvement, or any other structure . . . nor shall anything
 in this section be construed to augment, restrict or alter in any way
 the authority of the State Architect to require construction,
 alteration, repair, or modifications that the State Architect otherwise
 possesses pursuant to other laws.

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1 68. Defendants' acts and omissions as specified have denied to the plaintiff full and
2 equal accommodations, advantages, facilities, privileges and services in a business establishment,
3 on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil
4 Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A
5 violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public
6 Law 101-336) shall also constitute a violation of this section." Plaintiff accordingly incorporates
7 the entirety of his above cause of action for violation of the Americans with Disabilities Act at
8 §35, *et seq.*, as if repled herein.

9 69. As a result of the denial of equal access to defendants' facilities due to the acts and
10 omissions of defendants, and each of them, in owning, operating and maintaining these subject
11 public facilities, plaintiff suffered violations of plaintiff's civil rights, including but not limited to
12 rights under Civil Code §§54, 54.1 and 54.3.

13 70. Further, plaintiff CRAIG YATES suffered mental distress, mental
14 suffering, mental anguish, which includes shame, humiliation, embarrassment, frustration, anger,
15 disappointment and worry, all of which are expectedly and naturally associated with a denial of
16 access to a person with physical disabilities, all to plaintiff's damages as hereinafter stated.
17 Defendants' actions and omissions to act constituted discrimination against plaintiff on the sole
18 basis that plaintiff is a person or an entity that represents persons with physical disabilities and
19 unable, because of the architectural barriers created and maintained by the defendants in violation
20 of the subject laws, to use the public facilities hereinabove described on a full and equal basis as
21 other persons.

22 71. Plaintiff CRAIG YATES is entitled to the rights and remedies of §52(a)
23 of the Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to
24 mean "special and general damages"), as well as to reasonable attorneys' fees and costs, as is
25 allowed by statute, according to proof if deemed to be the prevailing party.

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PRAYER:

Plaintiff prays that this court award damages and provide relief as follows:

I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)

(On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants THE UNG CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY TRUST of 2004, inclusive)
(42 U.S.C. §12101, *et seq.*)

1. For injunctive relief, compelling defendants THE UNG CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY TRUST of 2004, inclusive, to make the ORIGINAL BUFFALO WINGS, located at 2499 Lombard Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and to make reasonable modifications in policies, practice, eligibility criteria and procedures so as to afford full access to the goods, services, facilities, privileges, advantages and accommodations being offered.

2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed the prevailing party; and

3. For such other and further relief as the court may deem proper.

II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, *ET SEQ.*

(On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants THE UNG CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY TRUST of 2004, inclusive)
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. For injunctive relief, compelling defendants THE UNG CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY TRUST of 2004, inclusive, to make the ORIGINAL BUFFALO WINGS, located at 2499 Lombard Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per state law.

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2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for each occasion on which plaintiff was deterred from returning to the subject public accommodation.

3. Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure §1021.5, if plaintiffs are deemed the prevailing party;

4. Treble damages pursuant to Civil Code §54.3;

5. General damages according to proof;

6. For all costs of suit;

7. Prejudgment interest pursuant to Civil Code §3291; and

8. Such other and further relief as the court may deem just and proper.

III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.

(On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants THE UNG CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY TRUST of 2004, inclusive)
(Health & Safety code §19955, *et seq.*)

1. For injunctive relief, compelling defendants THE UNG CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE FAMILY TRUST of 2004, inclusive, to make the ORIGINAL BUFFALO WINGS, located at 2499 Lombard Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per state law.

2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or, alternatively, Health & Safety Code §19953, if plaintiff is deemed the prevailing party;

3. For all costs of suit;

4. For prejudgment interest pursuant to Civil Code §3291;

5. Such other and further relief as the court may deem just and proper.

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1 **IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO**
 2 **FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,**
 3 **PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL**
 4 **CODE §51, *ET SEQ.* (THE UNRUH CIVIL RIGHTS ACT)**

5 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants THE UNG
 CORPORATION, dba ORIGINAL BUFFALO WINGS; PATRICIA MONTAGUE, an
 individual; and PATRICIA MONTAGUE, as trustee of the PATRICIA MONTAGUE
 FAMILY TRUST of 2004, inclusive)
 6 (California Civil Code §§51, 51.5, *et seq.*)

7 1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and
 8 for each occasion on which plaintiff was deterred from returning to the subject public
 9 accommodation;

10 2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiff is deemed the prevailing
 11 party;

12 3. General damages according to proof;

13 4. Treble damages pursuant to Civil Code §52(a);

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5. For all costs of suit;
6. Prejudgment interest pursuant to Civil Code §3291; and
7. Such other and further relief as the court may deem just and proper.

Dated: 7/29/2010, 2010

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

By: 

THOMAS E. FRANKOVICH
Attorneys for Plaintiff CRAIG YATES, an individual

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

Dated: 7/29/2010, 2010

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

By: 

THOMAS E. FRANKOVICH
Attorneys for Plaintiff CRAIG YATES, an individual

Exhibit A

Craig Yates
1004 Los Gamos Road, Unit E
San Rafael, CA 94903

April 30, 2010

Manager
Original Buffalo Wings
2499 Lombard Street
San Francisco, CA 94123

Dear Manager of Original Buffalo Wings:

Recently, I visited the Original Buffalo Wings. The food was quite good and reasonably priced. That part of my experience was good. However, there are a few problems that need your immediate attention. You see, I use a wheelchair. Wheelchair users like me (as I did) have a problem with the doors and parking. You can't get in on Divisadero Street. I have to use the Lombard entrance. On the Lombard side, there is no strike side clearance. It's the room next to the door that you would need in a wheelchair to angle in your chair and pull the door open. Anyway, you need a power door or make the other entrance usable. Also, you have no parking for the disabled. How about a parking space? Anyway, you can see how this is challenging for wheelchair users. That part of my experience was not good.

I thought the landlord and the tenant should know about this. That's why I wrote this identical letter to both of you. It's like letting the right hand know what the left hand is doing! If you both put your hands and heads together, I know the two of you can fix this problem.

You need to learn what needs to be done and do it now. So to help you, please call Pacific ADA and IT Center in Oakland at 1-800-949-4232, and ask them to send you all the information they have on access. Remember, wheelchair users have an old saying: "Access delayed is Access denied!" You understand, right? Anyway, please write me when you get this letter, tell me exactly what will be done and make me a promise that you will take care of this right away. Give me a date. If you are not the one in charge or don't have the responsibility to do it, would you make sure this letter goes to the person in charge or who can make decisions on what to do. Thanks!

Sincerely,


Craig Yates

Craig Yates
1004 Los Gatos Road, Unit E
San Rafael, CA 94903

April 30, 2010

Owner of the Building
Original Buffalo Wings
2499 Lombard Street
San Francisco, CA 94123

Dear Owner of the Building for Original Buffalo Wings:

Recently, I visited the Original Buffalo Wings. The food was quite good and reasonably priced. That part of my experience was good. However, there are a few problems that need your immediate attention. You see, I use a wheelchair. Wheelchair users like me (as I did) have a problem with the doors and parking. You can't get in on Divisadero Street. I have to use the Lombard entrance. On the Lombard side, there is no strike side clearance. It's the room next to the door that you would need in a wheelchair to angle in your chair and pull the door open. Anyway, you need a power door or make the other entrance usable. Also, you have no parking for the disabled. How about a parking space? Anyway, you can see how this is challenging for wheelchair users. That part of my experience was not good.

I thought the landlord and the tenant should know about this. That's why I wrote this identical letter to both of you. It's like letting the right hand know what the left hand is doing! If you both put your hands and heads together, I know the two of you can fix this problem.

You need to learn what needs to be done and do it now. So to help you, please call Pacific ADA and IT Center in Oakland at 1-800-949-4232, and ask them to send you all the information they have on access. Remember, wheelchair users have an old saying: "Access delayed is Access denied!" You understand, right? Anyway, please write me when you get this letter, tell me exactly what will be done and make me a promise that you will take care of this right away. Give me a date. If you are not the one in charge or don't have the responsibility to do it, would you make sure this letter goes to the person in charge or who can make decisions on what to do. Thanks!

Sincerely,



Craig Yates